



## SENTENCING IN WISCONSIN

### Snapshots of Information on Wisconsin Sentencing

February 18, 2005

Volume 2, No. 2

#### Victim Information in Wisconsin Courts, 2003 – 2004

Melissa L. Schmidt, Research Analyst and Daniel A. Fischer, Research Analyst

This past year in *State v. Gallion*, the Wisconsin Supreme Court reaffirmed victim rights at sentencing.<sup>1</sup> The court reiterated that the Wisconsin Constitution affords certain rights to crime victims, including the right to “make a statement to the court at disposition.”<sup>2</sup> Judges are required to enforce this right in two ways. First, judges are required to give victims the opportunity to make a statement at sentencing.<sup>3</sup> Second, judges must make sure that the district attorney has both conferred with the victim and given him or her notice regarding the date of sentencing.<sup>4</sup> The sentencing court may also consider the effect of the crime on the victim as a sentencing factor.<sup>5</sup>

*Gallion* stated that “judges have an enhanced need for more complete information upfront, at the time of sentencing.”<sup>6</sup> *Gallion* acknowledged that the Sentencing Commission plays an important role in the sentencing process by providing useful data and guidelines to judges.<sup>7</sup> “The rule of law is advanced by providing advisory guidelines that channel outcomes in the majority of cases and serve as a touchstone for explaining the reasons for the particular sentence imposed.”<sup>8</sup>

Wisconsin sentencing laws allow judges to detail their reasoning regarding the defendant’s impact on victims and their families. This is reflected in Wisconsin’s temporary guideline worksheets. Nine out of the eleven temporary guideline worksheets currently assess the harm on victims by asking four questions:

- (1) Was the victim vulnerable?
- (2) Did the offender target a vulnerable victim?
- (3) Did the victim suffer bodily harm?
- (4) If so, what was the type of bodily harm?

The following chart demonstrates how many of the returned TIS II worksheets (2003 and 2004 cases) listed at least one of the four questions checked as a factor that the judge considered during sentencing. Overall, at least one victim question is checked for 30 percent of the submitted worksheets analyzed.

<sup>1</sup> *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197.

<sup>2</sup> *Id.* ¶ 64, 270 Wis. 2d 535, 678 N.W.2d 197 (citing Wis. Const. Art. 1 § 9m).

<sup>3</sup> *Id.* ¶ 64 (citing Wis. Stat. § 972.14(3)(a) (2004)).

<sup>4</sup> *Id.* ¶ 64 (citing Wis. Stat. § 971.095(2)).

<sup>5</sup> *Id.* at n.11 (citing *State v. Jones*, 151 Wis. 2d 488, 444 N.W. 2d 760 (Ct. App. 1989)).

<sup>6</sup> *Gallion*, 2004 WI 42, ¶ 34, 270 Wis. 2d 535, 678 N.W.2d 197.

<sup>7</sup> *Id.* ¶ 35.

<sup>8</sup> *Id.* ¶ 35 (emphasis added).

**Table 1**

Offense*	Statute	Percent of Cases with Victim Data Recorded
First Degree Sexual Assault	940.225(1)	50%
Second Degree Sexual Assault	940.225(2)	30%
First Degree Sexual Assault of a Child	948.02(1)	62%
Second Degree Sexual Assault of a Child	948.02(2)	52%
Forgery/Uttering	943.38	9%
Robbery	943.32(10)	45%
Theft (>\$10,000)	943.20	14%
<b>Total</b>		<b>30%**</b>

**Source:** Wisconsin Sentencing Commission Temporary Guideline Worksheets, 2003-2004.

\*This list does not include analysis of armed robbery, burglary, PWID – Cocaine, or PWID – THC because data are not sufficient at this time.

\*\* The total number of TIS II worksheets submitted at the time of this report was 1056. When adding the armed robbery, burglary, PWID – Cocaine, and PWID – THC worksheets, the total percent of cases with victim data recorded was actually only 14%.

Analysis of the submitted worksheets for these seven offenses indicate that a judge's determination of the offense severity and the risk assessment increase when at least one victim question is checked. By assigning numbers 1-3 to the levels of both offense severity and risk assessment, the differences in mean scores were determined. The differences in the mean levels of both Offense Severity and Risk Assessment listed in

Table 2 and are significant with 95% confidence. Because all four of the victim questions are currently listed under the offense severity category, it is interesting that the difference in risk assessment is also significant. Unfortunately, it is uncertain whether both increases are due to one of the victim checkmarks or other relevant factors.

**Table 2 (Low = 1, Medium = 2, High = 3)**

Offense Severity	Risk Assessment
Victim Check = 2.12	Victim Check = 1.97
No Victim Check = 1.81	No Victim Check = 1.82

**Source:** Wisconsin Sentencing Commission Temporary Guideline Worksheets, 2003-2004.